

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matters of:)	
)	
Petition of Free Press et al. for Declaratory)	
Ruling that Degrading an Internet)	
Application Violates the FCC's Internet)	
Policy Statement and Does Not Meet an)	
Exception for "Reasonable Network)	WC Docket No. 07-52
Management")	
)	
)	WC Docket No. 08-7
Vuze, Inc. Petition to Establish Rules)	
Governing Network Management Practices)	
by Broadband Network Operators)	
)	
Broadband Industry Practices)	
_____)	

COMMENTS OF ROBERT M. TOPOLSKI

February 27, 2008

Robert M. Topolski
*As a private individual and
customer of Comcast Corporation*
2345 SE 55th Avenue
Hillsboro, Oregon 97123-8145
(503) 407-4499
robb@funchords.com

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matters of:)	
)	
Petition of Free Press et al. for Declaratory)	
Ruling that Degrading an Internet)	
Application Violates the FCC's Internet)	
Policy Statement and Does Not Meet an)	
Exception for "Reasonable Network)	WC Docket No. 07-52
Management")	
)	
)	WC Docket No. 08-7
Vuze, Inc. Petition to Establish Rules)	
Governing Network Management Practices)	
by Broadband Network Operators)	
)	
Broadband Industry Practices)	
_____)	

COMMENTS OF ROBERT M. TOPOLSKI

I am a customer of Comcast Corporation, subscribing to both their High-Speed Internet service as well as a mid-level television package. I am one of the Comcast customers whose testimony appears attached on the original Free Press petition as I directly observed, researched, and documented the Comcast interference with Peer-to-Peer (P2P) File-Sharing protocols.

A central issue in this case is the fact that Comcast failed to notify its users in any way, form, or manner that it was degrading or would begin to degrade the ability of users attempting to share their files with other users over Peer-to-Peer (P2P) networks.

When first caught tearing down uploading connections, Comcast repeatedly denied it. For example, this was the account of Marguerite Reardon of CNET News.com in August, 2007:

But when I spoke to Comcast spokesman Charlie Douglas earlier today, he flat-out denied that the company was filtering or "shaping" any traffic on its network. He said the company doesn't actively look at the applications or content that its customers download over the network. But Comcast does reserve the right to cut off service to customers who abuse the network by using too much bandwidth.¹

A few weeks later, the Electronic Frontier Foundation (EFF), responding to inquiries they have received, elicited another denial from Comcast, as summarized by EFF Staff Technologist Seth Shoen:

On Wednesday, we spoke with Comcast to try to find out what was going on in this case. Comcast assured us that, while it does do some kinds of network management on its residential network, it isn't deliberately blocking, degrading, interfering with, or discriminating against particular protocols or kinds of traffic. (This is consistent with what Comcast told the press in August when these allegations were widely raised.) The company said that it isn't using network management techniques that are designed to disrupt anyone's use of BitTorrent (or any other application).²

Of course, these words – which were interpreted as outright denials by people who professionally report on news and technology – changed as both the Associated Press and the EFF proved that the allegations against Comcast were true. The latest position, delivered February 25, 2008 before the *En Banc* hearing of the Federal Communications Commission, comes from Comcast Vice-President David Cohen. In his statement, he says in so many words, that Comcast has always told its customers that it

¹ Comcast denies monkeying with BitTorrent traffic, CNET News.com, August 21, 2007 4:52 PM PDT, http://builder-news.com.com/8301-10784_3-9763901-7.html

² Comcast and BitTorrent, EFF Deeplinks Blog, September 13, 2007, <http://www.eff.org/deeplinks/2007/09/comcast-and-bittorrent>

throttles BitTorrent uploads. But since some failed to understand us, we reluctantly spelled it out again:

For years, our written usage policies have informed customers that our Internet service is a shared resource and that we manage our network to ensure as high a level of performance for all users as possible. Nevertheless, in the interest of creating an even greater transparency in this area, almost a month ago we revised our Acceptable Use Policy and Frequently Asked Questions that pertain to network management posted them on our Comcast.net website.³

Cohen's version of events is interesting, but it ignores the fact that Comcast flat-out denied taking the actions that it now says consumers should have known it was taking or would take in the future. Furthermore, this latest revision of the Acceptable Use Policy – which had not changed in over a year – was posted without any announcement to users in electronic mail, or by the US Postal service, or by any other means that would legally or reasonably qualify as Notice.

The revised notices were posted either on January 25th or 26th. Weeks before, I had configured my own webpage monitoring tools to monitor those pages for changes, as I expected changes might come prior to the FCC hearing, and I wanted to ensure that I would see them. Several days after they were posted, I became concerned because it appeared that nobody else had noticed that new Terms of Service (TOS) documents had been posted. I checked the official forums on Comcast.net and the unofficial Comcast forum on DSLReports.com. At that point, I alerted Marvin Ammori of the changes and the lack of notice, and he posted a blog entry⁴ that was picked up with interest by

³ Statement of David L. Cohen, Executive Vice President, Comcast Corporation, FCC Public En-Banc Hearing on "Broadband Network Management Practices," Cambridge, MA February 25, 2008, as filed in ECFS at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519844216

⁴ Comcast New Terms of Service: Recipe for Discrimination, SaveTheInternet Blog, February 6, 2008, <http://www.savetheinternet.com/blog/2008/02/06/comcast-new-terms-of-service-recipe-for-discrimination/>

commercial and amateur news-reporting sites (Google finds 2,180 pages as of the time that I write this)⁵.

Yet, Comcast had the gall to lie about this as well, telling members of the press that millions of customers were informed and that the Free Press was being less than accurate, as reported by Chloe Albanesius of Ziff-Davis:

*[Comcast spokeswoman Sena Fitzmaurice] said there were "millions of customers" who were greeted by a notice of the updated policy when signing onto to Comcast.net. "For Free Press to suggest that we didn't publicize [the new rules] to our customers is inaccurate."*⁶

Please remember that nine days had passed since Comcast revised those documents, and not one customer or member of the press found these changes noteworthy enough to post anywhere on the Internet. The SaveTheInternet blog was the first to publically mention it on February 6th. Given the public and customer interest in this situation, how is it possible that out of millions of notified customers, not one felt it worthwhile to mention it anywhere? Only after SaveTheInternet alerted the public, did the number of pages mentioning the change jump from zero to over 2,000!

I did attempt to set the record straight by sending a message to Ms. Albanesius with evidence proving that Comcast did not mention anything on the main Comcast.net page until after members of the press started asking about it⁷. I will attach that message and evidence to this filing.

⁵ Google Search Results: Personalized Results 1 - 100 of about 2,180 for new|revise|change tos|"terms of service" bittorrent|p2p comcast intitle:Comcast
<http://www.google.com/search?q=new%7Crevise%7Cchange+tos%7C%22terms+of+service%22+bittorrent%7Cp2p+comcast++intitle%3Acomcast>

⁶ Comcast Clarifies Things Users Cannot Do, PC Magazine (pcmag.com)
<http://www.pcmag.com/article2/0,2817,2258076,00.asp>

⁷ Personal email of Wednesday, February 13, 2008 to Chloe Albanesius from Robb Topolski (myself) entitled Comcast's Statement Regarding Customer Notice Does Not Match the Evidence (attached)

I am leveling the ironic charge that Comcast posted a public notice in a nefarious attempt to keep these changes a secret. However, the facts above do fit the charge. The motivation is to make it appear to the FCC and others that Comcast was simply performing in a manner consistent with its terms of service. When they were caught, again, they then compounded their deception with another lie that millions of customers were notified. The charge fits the pattern of corporate dishonesty and secrecy that has pervaded this entire episode. As you ponder the evidence before you, I urge you to remember the veracity of Comcast's statements, and assign their testimony with the weight that seems "reasonable" under the circumstances.

/s/ Robert M. Topolski

February 27, 2008

Robert M. Topolski
*As a private individual and
customer of Comcast Corporation*
2345 SE 55th Avenue
Hillsboro, Oregon 97123-8145
(503) 407-4499
robb@funchords.com

Robb Topolski

From: Robb Topolski [robb@funchords.com]
Sent: Wednesday, February 13, 2008 6:30 PM
To: 'chloe_albanesius@ziffdavis.com'
Cc: 'Marvin Ammori'; 'news@dslreports.com'
Subject: Comcast's Statement Regarding Customer Notice Does Not Match the Evidence

Attachments: <http---www6.comcast.net-a-> - Google Search 20060208 024400 GMT.jpg; Comcast.net Home Google Cache 20080205 140605 GMT.jpg; Comcast.net Home Live 20080208 024500 GMT.jpg



<http---www6.comcast.net-a-> - G...
st.net-a- - G...

Google Cache ...

Live 20080208...

Chloe,

My name is Robb Topolski and I am a customer of Comcast Corporation. I am among the first people to document the interference of Peer-to-peer file transfers on the Comcast network.

I just read your article <http://www.pcmag.com/article2/0,2817,2258076,00.asp> entitled Comcast Clarifies Things Users Cannot Do.

Another reporter mentioned to me that a Comcast spokesperson claimed that the company alerted users to the change on the front page of Comcast.net. I don't know why such claims still shock me, but they do. Fortunately, I was able to dig up evidence to the contrary.

Recall the timeline:

On January 25th, Comcast replaced the documents on its Terms of Service (TOS) page with new versions.

On February 7th, Marvin Ammori reports that Comcast changed the TOS documents without notifying users, and gives a critical review of their contents.

On February 7th and 8th, Comcast tells reporters that Customers were notified on Comcast.net. Quoting your article,

[Comcast spokeswoman Sena Fitzmaurice] said there were "millions of customers" who were greeted by a notice of the updated policy when signing onto Comcast.net. "For Free Press to suggest that we didn't publicize [the new rules] to our customers is inaccurate."

It is simply not true.

I logged on to Comcast.net several times between January 25th and February 7th. I was modifying some personal web pages that are hosted on their server. I also accessed the site as a visitor on January 28th.

I looked carefully for any notice of the change. I also searched Google, which indexes the Comcast.net site.

When told by the reporter that Comcast was claiming that they had notified users on the Comcast.net site, I immediately checked the site. Indeed, there now was a story posted about 2/3rds down the page.

I then went back to Google, and pulled up a cached version of the same page. The cached version was recorded by Google when their spider visited the site on February 5th. Guess what? No story about any TOS changes.

This is an important point to me, because Comcast's claim that a notice was posted makes FreePress.org and Marvin Ammori look publicly foolish -- and I am their source for the claim that Comcast customers were not notified.

So, please note these pictures attached:

1. <http---www6.comcast.net-a-> - Google Search 20060208 024400 GMT.jpg

Above is a snapshot of the search I did in Google. There is a typographical error in the year (20060208 should be 20080208).

2. Comcast.net Home Google Cache 20080205 140605 GMT.jpg

Above is a snapshot of the Comcast.net page as recorded by Google at the date and time indicated by their spider.

3. Comcast.net Home Live 20080208 024500 GMT.jpg

Above is a snapshot of the Comcast.net page as it looked after FreePress.org reported that it had quietly changed the TOS documents.

I hope this settles the matter.

Please feel free to distribute this letter and those images as you see fit. The reputation of good people do not deserve to be smeared by dishonest PR tactics.

Sincerely,

Robert M "Robb" Topolski
robb@funchords.com
503-407-4499

PS: I am copying Marvin Ammori of Freepress.org on this message, as well as Karl at DSLReports.com -- the blog which has documented every twist and turn of this issue since since I first reported it back in May. They, likewise, may redistribute my statement and these images as they see fit.



[Advanced Search](#)
[Preferences](#)

Web

Results **1 - 1** of **1** for [http://www6.comcast.net/a/](#). (0.70 seconds)

Comcast.net Home

New Email. Sign in to preview your Comcast email here. Sign In. To preview your messages here, please upgrade to the latest version of Macromedia Flash ...

[www6.comcast.net/](#) - 91k - 23 hours ago - [Cached](#) - [Similar pages](#) - [Note this](#)

In order to show you the most relevant results, we have omitted some entries very similar to the 1 already displayed. If you like, you can repeat the search with the omitted results included.

[Search within results](#) | [Language Tools](#) | [Search Tips](#) | [Dissatisfied? Help us improve](#) | [Try Google Experimental](#)

These terms only appear in links pointing to this page: <http://www6.comcast.net/a>

Welcome Guest
[Sign In](#) [My Account](#)

Email

Voice Mail

Digital TV

Alerts

comcast.net


Web Video Images Yellow Pages News

Search

See your weather, stocks and more in the Assistant

News Sports Finance Entertainment TV Music Games Shopping More

Can't find what you're looking for? Try here



Nasty Neighbors
Do the people next door drive you nuts? A new website lets you share your neighbor nightmares.

- Rotten Neighbors Exposed Online
- How to Deal with Your Neighbors
- Did 'Bond' Star Bully His Neighbor?
- Police Remove 209 Cats from Home
- Family Comes Home, Finds Sleeping Burglar

Plus: Share Your Bad Neighbor Experiences

Looking to Move?

Today in Sports

- Bobby Knight Resigns
- Giants Deserved It More?
- Saints' DE Grant Stabbed, Woman Killed
- Most Seen Super Bowl Ever
- Falcons Lose Vick Money
- Vitale's Voice Is Back

[Top Sports News](#)

Showbiz Buzz

- Hannah's Hotter Than Alba
- 'Grey's' Star Hospitalized
- 'General Hospital' Star Dies
- 'Scrubs' Star Welcomes Baby Girl
- Kat McPhee Gets Married
- Brit's House Robbed

[Oscar Night Saved?](#)

Top Videos

- John Ritter's Widow Speaks Out on His Death
- Spice Girls Cut Short World Tour
- Watch the Best and Worst Super Bowl Ads
- Van der Stoep Tape: She Died on the Beach

[Launch the Fan](#)

More From Comcast.net


- Autos
- Dating
- Jobs
- Movie Tickets
- Play Games
- Travel
- Shopping
- Game Invasion
- See TV Online

In the News


U.S. Sports Entertainment Odd

- Navy Must Comply With No-Sonar Rule
- Super Tuesday Weather Could Snarl Vote
- Jonesboro Shooter Arrested Again
- Md. Scout Held Without Bail in Killings
- Mardi Gras Fun Rolls Despite Violence
- New Mormon President, 80, Is Picked


[More U.S. News](#)

A Better Britney?


The pop princess is finally getting the help she needs, but will the media circus let her heal? [Find Out in Entertainment](#)

Video Chart-toppers

Watch the latest music videos from Alicia Keys, Jordin Sparks, Taylor Swift, and more of today's hottest artists in Comcast.net Music. [More Hot Videos](#)

One Address Book Forever!

Store all your contacts in one place. Merge and update address books automatically. [The Comcast Universal Address Book Powered by Plaxo](#)

Download the Toolbar

Browsing the Web is a snap with the Comcast Toolbar. With email, search, and security tools all in one place, it's sure to make your online experience a breeze! [Get It Now!](#)

Comcast Marketplace

Upgrade to HDTV

- 50 Inches and Up
- 40 to 49 Inches
- 30 to 39 Inches
- Up to 30 Inches
- Sets Under \$1,000

Home Chic Home


- Living Room Sets
- Sofas
- Coffee Tables
- Bedroom Sets
- Comforters

[Comcast Travel: One-Stop Shop for Cheap Airline Tickets, Deals and More](#)

[Search for jobs closer to home with Comcast.net Jobs powered by Monster!](#)

[Meet singles and review your matches for free. Comcast.net Dating with eHarmony.com](#)

You've Got Talent!



Ziddio of the Day
Video by: Swjunior
Title: Zombie Love
Content: Commercial Sh...




Photo of the Day
Photo by: Brenda S.
Title: Sunset in Key...

Got Talent?
Enter one of Ziddio's video contests

Got Talent?
Enter our Photo of the Day contest!

Have You Tried

- Anti-Virus and Firewall
- Comcast Toolbar
- Community Forums
- Disney Connection
- Photo Center
- Help

Quick Links

- Weather
- Autos
- Dating
- Shopping
- Jobs
- Travel

Fun Sites

- Fancast
- Game Invasion
- Fandango
- Ziddio
- Play Games
- FEARnet

Get More

- Entertainment
- Finance
- News
- Sports
- Music
- TV

Add Comcast Services

Faster High-Speed Internet

Digital Cable

Digital Voice

High Definition TV

© 2008 Comcast Interactive Media

[Privacy Statement](#) [Terms of Service](#) [Contact Us](#) [Movies?](#) [Advertise With Us](#)

Comcast

Hi Robb

[Sign Out](#) [My Account](#)

comcast.net

Web

Video

Images

Yellow Pages

News

Assistant ▾

Hillsboro, OR

43°


[News](#) [Sports](#) [Finance](#) [Entertainment](#) [TV](#) [Music](#) [Games](#) [Shopping](#) [More ▾](#)
[Can't find what you're looking for? Try here](#)

ADVERTISEMENT

In the News

Stay on top of today's headlines:

- Senate OK's Plan for Tax Rebate Checks
- McCain Seals GOP Nom as Romney Quits
- Whistleblower Wins \$68 Mil Award
- Man Shoots Teacher in Front of Class
- Ex-ABC Reporter Dies in Ski Crash
- Baby Found Alive in Field After Tornado
- Court Has Mystery Spears Hearing

[more](#) [Top Stories](#) [Tax Tips](#)

Today in Sports



- Injury Puts Schilling's Career in Jeopardy
- Skins Lose Another One
- Super Bowl Threat Revealed
- Shaq: 'I'm Very Upset'
- Eli Cracks on Belichick
- Final NFL Power Rankings
- [EPL Coming to America?](#)

Showbiz Buzz



- Kirsten Dunst in Rehab?
- Cheer: I Dated Tom Cruise
- Heldi Fleiss Arrested
- What Was Lohan Thinking?
- Parents: Britney at Risk
- Leo Courts Lawsuit
- Jolie on A-list Mission
- [Watch Oscar Clips!](#)

Top Videos



- Beauty Queen Jailed
- Lie Detector Catches Tyra
- Ex-ABC Reporter Dies in Ski Crash
- 'Idol' Saves Worst for Last?
- 'Ugly Betty' Slims Down
- Ledger's Parents Speak Out
- [Launch the Fan](#)

More From Comcast.net

- Autos
- Dating
- Jobs
- Movie Tickets
- Play Games
- Travel
- Shopping
- Game Invasion
- See TV Online

In the News

[U.S.](#) [Sports](#) [Entertainment](#) [Odd](#)

- Gunman Opens Fire at Mo. Public Meeting
- Cops: Dozens Hurt in Ga. Refinery Blast
- Baby a Sign of Hope in Devastated South
- Storm Hits 4 Generations of Ky. Family
- Az Illegal-Immigrant Hiring Law Upheld
- Mob Sweeps in NYC, Italy Target Gambinos

[More U.S. News](#)Markets: Dow: **+46.90** Nasdaq: **+14.28**

Get a Stock Quote:

[Comcast Finance](#)[My Portfolio](#)[Go](#)

Actor-in-Chief



Could Obama out-punch terrorists hijacking Air Force One? Hollywood has funny ideas of what makes a good head of state. Who's your Favorite Movie or TV President?

High-Profile Politics



Oprah Winfrey isn't the only one. Other celebrities are getting involved in the political world as the presidential race heats up. [Get the Latest!](#)

Singled Out



Sick of being single on Valentine's Day? It's time you got a personality profile from Comcast Dating powered by eHarmony. You can even see your matches free. [Go!](#)

New Comcast Policy



Comcast has updated its Acceptable Use Policy (AUP). Read the new AUP to stay informed of these most recent changes. [Review the new AUP](#)

Comcast Marketplace

[More Shopping](#)

Cool Kicks



- Boots
- Casual Shoes
- Pumps
- Dress Shoes
- Wedges

Upgrade to HDTV



- 50 Inches and Up
- 40 to 49 Inches
- Up to 30 Inches
- 30 to 39 Inches
- Sets Under \$1,000

[Comcast Travel: One-Stop Shop for Cheap Airline Tickets, Deals and More](#)[Search for jobs closer to home with Comcast.net Jobs powered by Monster!](#)[Meet singles and review your matches for free. Comcast.net Dating with eHarmony.com](#)

The "It" Lists

Top Funny Forums



- Stupid Human Tricks
- Mangled Song Lyrics
- Joke(s) of the Day
- Who's Your Favorite Comedian?
- The Best Movie Comedy Ever?

[More Laughing Matters](#)

Clips: Will Ferrell's Funniest Flicks



- Trailer: His New Movie, 'Semi-Pro'
- How Did Ferrell Train for Glory on Ice?
- Will's Advice to Aspiring Journalists
- Ricky Bobby Goes Nose-to-Nose
- Ferrell Kicks It 'Old School'

[Ferrell Started as a Sportscaster?](#)

You've Got Talent!

Ziddio of the Day



Video by: **Caius**
Title: AOTS for Spar...
Contest: Commercial Sh...

Got Talent?
[Enter one of Ziddio's video contests](#)

Photo of the Day



Photo by: **Tim F.**
Title: Tower Lights

Got Talent?
[Enter our Photo of the Day contest!](#)

Have You Tried

- Anti-Virus and Firewall
- Comcast Toolbar
- Community Forums
- Disney Connection
- Photo Center
- Help

Quick Links

- Weather
- Autos
- Dating
- Shopping
- Jobs
- Travel

Fun Sites

- Fancast
- Game Invasion
- Fandango
- Ziddio
- Play Games
- FEARnet

Get More

- Entertainment
- Finance
- News
- Sports
- Music
- TV

[Add Comcast Services](#)[Faster High-Speed Internet](#)[Digital Cable](#)[Digital Voice](#)[High Definition TV](#)

Comcast Clarifies Things Users Cannot Do

ARTICLE DATE: 02.08.08

By [Chloe Albanesius](#)

Comcast quietly updated its acceptable use policy (AUP) this week to further explain its policies regarding bandwidth consumption, a move Free Press quickly criticized as Comcast publicizing its discrimination.

"The acceptable use policy was made more clear and easy to understand for our customers," Comcast spokeswoman Sena Fitzmaurice said Friday.

Comcast [came under fire last year](#) when it was revealed that the provider was cutting off bandwidth hogs, but not telling them how much bandwidth use Comcast actually allowed. The cable provider was later accused of cutting off access to file-sharing networks; an issue the Federal Communications Commission (FCC) [is now investigating](#).

Comcast has maintained on both issues that it reserves the right to manage its own network. Customers who find themselves cut off unexpectedly would have to be sending the equivalent of 256,000 photos a month, 13 million e-mails every month or 18,000 emails every hour, every day, all month, Comcast said. On P2P use, meanwhile, Comcast admitted to "delaying" file-sharing traffic during peak hours, but denied ever cutting off P2P access.

Comcast's previous [AUP](#) included a paragraph that prohibited activity that would "cause a performance degradation." It also warns customers not to "exceed the limitations that are now in effect or may be established in the future."

Art Reisman outlines the tradeoffs ISPs must take to solve the BitTorrent situation.

The [updated AUP](#) does not add anything particularly revelatory, but includes some more tightly worded paragraphs on Comcast's network management and bandwidth restrictions.

Comcast "reserves the right to suspend or terminate service accounts where bandwidth consumption is not characteristic of a typical residential user," the revised policy reads.

Activities that could eat bandwidth include numerous or continuous bulk file transfers, the use of FTP, peer-to-peer applications or newsgroups, the policy continues.

Users are also not allowed to create an "overly large burden on the network." Those who do not comply will be cut off or asked to upgrade their accounts.

"Comcast may also provide a version of the service with different speed and bandwidth consumption limitations," the policy reads.

Free Press, the interest group that filed a complaint with the FCC regarding its P2P activity, said the updated policy "now admits to curbing users' access to innovative services."

"Comcast's new restrictions remove any doubt about who the cable and broadband giant is looking out for – and it's not the customer," Marvin Ammori, Free Press general counsel, wrote in a blog post. "The bottom line is, we can't trust Comcast – or any other Internet service provider – with the future of the Internet."

Free Press also criticized Comcast for not publicizing the changes made to its AUP. "Comcast's radio silence on these changes speaks volumes," Ammori wrote. "After all, why publicize a limited and throttled service when you are pitching unlimited Internet access to our customers?"

Fitzmaurice said there were "millions of customers" who were greeted by a notice of the updated policy when signing onto Comcast.net. "For Free Press to suggest that we didn't publicize [the new rules] to our customers is inaccurate."

Last month the FCC requested that Comcast respond in writing by January 25 regarding the P2P accusations. "We will be filing a response in the public notices this Wednesday," Fitzmaurice said.